

FINDING OF EMERGENCY

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code Section 11346.1.

DESCRIPTION OF SPECIFIC FACTS WHICH CONSTITUTE THE EMERGENCY

These regulations are being implemented on an emergency basis to fulfill the mandate of Senate Bill (SB) 1569 (Chapter 672, Statutes of 2006). SB 1569 SEC. 4(a) requires that these regulations be adopted by the Director of the Department of Social Services no later than July 1, 2008, and further provides that the regulations may be adopted by the Director on an emergency basis in accordance with the Administrative Procedure Act. Based upon the common knowledge and documented examples of the effects of a severe form of human trafficking and domestic violence and other serious crimes on noncitizen individuals, the establishment of a public support program is unquestionably necessary to prevent serious avoidable harm to this population.

Further, the nonemergency rulemaking process provided by Government Code Section 11346 et seq. is sufficiently lengthy, making it impossible to implement regulation changes by the mandated implementation date.

In the *June 2006 Trafficking in Persons Report* issued by the United States (U.S.) Department of State, Secretary of State Condoleezza Rice states, in an introductory letter, "Trafficking in persons is a form of modern-day slavery, and we strive for its total abolition. Future generations will not excuse those who turn a blind eye to it. Human traffickers prey on the most vulnerable and turn a commercial profit at the expense of innocent lives."

SB 1569 was enacted to provide assistance to noncitizen victims of a severe form of human trafficking by creating a new, state-funded program to provide critical services to these victims as they await, or prepare to request approval for, federally-funded benefits. SB 1569 also recognizes that noncitizen victims of domestic violence or other serious crimes who have or who are willing to cooperate with law enforcement officials need support and services as well. SB 1569 provides eligible, noncertified, noncitizen trafficking victims and victims of domestic violence or other serious crimes, cash assistance and social services equivalent to those available to refugees.

Noncitizen victims of human trafficking, domestic violence, and other serious crimes are among the most vulnerable individuals in our society. As victims, they are likely to have been isolated, intimidated, threatened, injured and/or assaulted, held against their will, and divested of all assets, documents, and possessions. In October 2000, the federal Trafficking Victims Protection Act (TVPA) created two new nonimmigrant visas, the "T" Visa, for victims of a severe form of human trafficking, and the "U" Visa, for victims of criminal activity as defined in federal statute, to allow these individuals to remain in the U.S.

While the TVPA seeks to provide a safety net to these victims in the form of a stay of deportation and in trafficking cases, benefits equivalent to those of refugees, a gap exists

between the time a victim comes forward and the time s/he is able to meet all the requirements to qualify for federal assistance. These requirements include, but are not limited to, cooperation with law enforcement and completion and submittal of all necessary documentation, testimony, and paperwork, including filing for a T Visa or a request for "continued presence" by law enforcement made on the victim's behalf (trafficking victim) or a U Visa (crime victim). Upon completion of all requirements, a trafficking victim may obtain certification by the U.S. Department of Health and Human Services (HHS), which in turn may entitle him/her to the same benefits available to refugees. A crime victim may obtain a U Visa which provides deferred action on deportation and entitles him/her to apply for work authorization. SB 1569 seeks to fill this critical gap.

Assistance in the form of benefits and services is perhaps most needed initially upon emergence from the victimization. According to a 2005 report from the U. S. Attorney General's Office, *Assessment of U.S. Government Activities to Combat Trafficking in Persons*, "The period between being rescued and receiving certification is the time when victims are most vulnerable and typically have a host of needs that includes housing, clothing, and food; medical, dental, and psychological care; legal assistance and immigration advocacy; and interpretation services; but, few organizations or communities have the resources to provide or fund these services." (p. 8).

HHS asserts in a "Fact Sheet on Certification for Victims of Trafficking" (updated November 10, 2004) from the *Campaign to Rescue and Restore Victims of Human Trafficking*, that the certification process takes only a few days after HHS is notified that a person has made a bona fide T Visa application or has been granted continued presence status. But, it must be noted that the period preceding either of these actions, when confidences are being won, trust is being built, statements are taken, documentation is gathered, and healing is beginning, is the most difficult and lengthy period, as victims muster up the courage, effort and determination required to work with law enforcement, government agencies, and possibly, their perpetrators in court. In the introduction to the *Trafficking in Persons Report* it is noted that "Few victims are willing to identify themselves upon initial contact with law enforcement authorities. They are fearful of real or imagined reprisals and are still undergoing trauma from the servitude experience. They cannot and should not be expected to immediately report objectively on the dimensions of their exploitation." (p. 5). The time period during which SB 1569 is intended to provide benefits and services is perhaps the most critical, and requires immediate action to promulgate regulations to address this need.

The need for immediate action in assisting noncitizen victims of human trafficking, domestic violence, and other serious crimes is supported by the specific facts of the horrors faced by these individuals and their need for immediate assistance, in order not only to preserve their health, safety, and general welfare, but to provide perhaps the only protection and hope for restoration they have experienced in a long time.

INFORMATIVE DIGEST

SB 1569 (Chapter 672, Statutes of 2006) amends and adds sections to the Welfare and Institutions Code to extend eligibility for certain public social services to noncertified, noncitizen victims of a severe form of human trafficking and noncitizen victims of domestic violence and other serious crimes, to the same extent as refugees.

In October 2000, the federal Trafficking Victims Protection Act (TVPA) created two new nonimmigrant visas, the "T" Visa, for victims of a severe form of human trafficking, and the "U" Visa, for victims of criminal activity as defined in federal statute, to allow these individuals to remain in the United States (U.S.) The U.S. Department of Health and Human Services, Office of Refugee Resettlement (ORR), after consultation with the U.S. Attorney General, may certify a victim of a severe form of trafficking who is willing to assist in every reasonable way with the investigation and prosecution of human traffickers; and has made a bona fide application to the Bureau of United States Citizenship and Immigration Services (USCIS) for a T Visa and the application has not been denied; or is a person for whom "continued presence" in the U.S. has been requested by law enforcement because s/he is assisting or willing to assist the U.S. Attorney General and/or other law enforcement agency in the prosecution of human traffickers.

Federal law defines noncitizen victims of serious crimes as aliens who have suffered substantial physical or mental abuse as a result of having been victims of severe criminal activity and possess information concerning criminal activity (or in the case of an alien child under the age of 16, the parent, guardian, or adult representing the child); and have been helpful, are being helpful, or are likely to be helpful to a federal, state, or local law enforcement official, prosecutor, or judge or to other federal, state, or local authorities investigating or prosecuting criminal activities described above (or in the case of an alien child under the age of 16, the parent, guardian, or adult representative of the alien is helpful).

Certain federal programs provide benefits and services to refugees and victims of human trafficking who meet federal eligibility criteria. Noncertified victims of human trafficking and noncitizen victims of serious crime are not eligible for federal programs. SB 1569 provides benefits and services to the same extent as those persons eligible under the federal Refugee Act of 1980. Services include, but are not limited to the equivalent of: Refugee Cash Assistance, Refugee Medical Assistance, Refugee Employment Social Services, California Work Opportunity and Responsibility to Kids, Food Stamps, Cash Assistance Program for Immigrants, and Healthy Families Program benefits. Once the trafficking victim has been certified by ORR, he or she is eligible for federal benefits and services to the same extent as refugees.

SB 1569 requires the California Department of Social Services (CDSS) to adopt regulations to implement and administer the provisions of the bill no later than July 1, 2008 (on an emergency basis if necessary). These proposed regulations require county welfare departments to determine eligibility for this program based upon a noncitizen applicant's status as a victim of a severe form of human trafficking or a victim of domestic violence or other serious crime, as defined in the law. Once determined eligible under SB 1569, other program rules apply, provided that compliance is authorized by law.

COST ESTIMATE

1. Costs or Savings to State Agencies: Expenditures of \$2,951,000.00 have been budgeted in the current State Fiscal Year (SFY) as reflected in the November 2007 Subvention.
2. Costs to Local Agencies or School Districts: None.
3. Nondiscretionary Costs or Savings to Local Agencies: Expenditures of \$7,000.00 have been budgeted in the current SFY as reflected in the November 2007 Subvention.

4. Federal Funding to State Agencies: No fiscal impact exists because this regulation does not affect any federally funded State agency or program.

LOCAL MANDATE STATEMENT

These regulations do impose a mandate upon local agencies, but not school districts. If the Commission on State mandates determines that this act contains costs mandated by the state, reimbursement to local agencies for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Welfare and Institutions Code Sections 10553 and 10554 and Senate Bill 1569 (Chapter 672, Statutes of 2006). Subject regulations implement and make specific Welfare and Institutions Code Sections 13283, 14005.2, and 18945.